

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

CASE NO. 02-0254-T-C

NORTH COUNTY COMMUNICATIONS CORPORATION,

Complainant,

v.

VERIZON WEST VIRGINIA INC.,

Defendant.

ANSWER, COUNTERCLAIM AND PRAYER FOR EXPEDITED RELIEF

Verizon West Virginia Inc. ("Verizon WV") hereby answers the Complaint, and further counterclaims against the Complainant, North County Communications Corporation ("North County") for expedited relief from this Commission, as follows:

ANSWER

Verizon WV, for answer to the Complaint filed in this proceeding, says:

1. Verizon WV admits the allegations in Paragraph 1 of the Complaint.
2. Verizon WV denies the allegation in Paragraph 2 of the Complaint.

Count I

3. Verizon WV specifically denies the allegations in Paragraph 3 of the Complaint that Verizon WV "unreasonably, unlawfully and unjustly refuses to transport 500-XXX-XXXX numbers belonging to NORTH COUNTY over VERIZON'S network." In order "to fully and completely advise the parties and the Commission of the nature of

the nature of the defense," as required by Rule 7 of the Commission's Rules of Practice and Procedure, C.S.R. § 150-1-7.4 (2001), Verizon WV further states as follows:

a. Far from being anti-competitive, Verizon WV's provisioning of its terminating trunks to North County over dedicated facilities makes sufficient facility capacity available for additional terminating interconnection trunks to North County.

b. In addition, those dedicated facilities can also be utilized to provision interconnection trunks or special access services, or both, that North County may wish to order from Verizon WV, thereby allowing North County greater access to Verizon WV's wholesale services, and thus promoting the pro-competitive intent of the Telecommunications Act of 1996.

12. Paragraph 12 of the Complaint is a request for relief for which no response is required.

WHEREFORE, Verizon WV respectfully requests that the Complaint be dismissed.

COUNTERCLAIM

Verizon WV counterclaims, and for a claim upon which relief can be granted by this Commission, says:

Operative Facts

1. The Complainant, North County, is a competitive local exchange carrier ("CLEC") that has adopted the MCI Metro/Bell Atlantic Interconnection Agreement (the "Interconnection Agreement").

2. North County's adoption of the Interconnection Agreement became effective on or about January 19, 2001.

3. On January 24, 2001, an initial conference call was held with North County and Verizon WV representatives to discuss the requirements for North County's interconnection in West Virginia. Ms. Diane McKernan (Account Manager - Verizon Wholesale Markets) as well as other operations personnel participated on the call on behalf of Verizon WV. Mr. Todd Lesser and Mr. David Klein (later identified as North County's attorney at the conclusion of the call) participated on that call on behalf of North County Communications.

4. During the call, Verizon WV explained that North County is required to provide Verizon WV with a two-year forecast of its interconnection traffic capacity requirements. Furthermore, Mr. Lesser was given the option of either leasing a dedicated facility from Verizon WV or from another existing wholesale carrier, or collocating at Verizon's central office for delivery of North County's interconnection traffic to Verizon WV. Rather than choosing any of the options above, Mr. Lesser insisted that, for purposes of local interconnection with North County, Verizon WV should use an existing shared end-user multiplexing facility (in his words, an "entrance facility"), that was currently being used to serve Verizon retail customers located in the same building complex where NCC was located. Mr. Lesser was advised that Verizon WV utilizes dedicated facilities, not shared end-user facilities, for the installation of interconnection trunks with carriers.

5. In late February or early March of 2001, after further discussions with Verizon WV, Mr. Lesser chose to have Verizon WV build a dedicated entrance facility for purposes of delivering its interconnection traffic to Verizon WV.

6. As of March 1, 2001, North County had not provided its traffic capacity requirements (forecast) to Verizon WV, to permit Verizon WV to plan for North County's traffic capacity needs.

7. In early March 2001, after receipt of North County's interconnection forecast and other necessary interconnection information from North County, Verizon WV initiated the build for a dedicated facility at North County's premises in Charleston, WV on March 7, 2001.

8. Near the end of July 2001, Mr. Lesser urgently contacted Verizon WV and claimed that Neustar (the third-party NXX Code Administrator) would reclaim his NXX codes on July 31, 2001 unless North County had at least one (1) T1 transport facility and associated DS0 trunks turned-up as soon as possible. Mr. Lesser requested that Verizon WV activate interconnection trunks (carrying local traffic from Verizon WV to North County) so that he would not lose his NXX codes. As a favor to Mr. Lesser, Verizon WV provisioned, on an expedited basis, one (1) T1 trunk group (24 DS0's) to each Tandem in the Charleston LATA on alternate facilities. This was done with the understanding that as soon as possible after the dedicated facility was complete, this traffic would be migrated to the dedicated facility. Verizon WV informed North County that the arrangement was in no way permanent, and that Verizon WV used the alternate facilities as a stop-gap measure so that North County would not lose its NXX codes. Verizon WV had no obligation to provision service in this manner, but did so as a professional courtesy.

9. The dedicated facility construction in Charleston, West Virginia was completed, at Verizon WV's own expense, on July 31, 2001. Verizon WV engineered and built the dedicated facility for purposes of handling North County's forecasted interconnection requirements, including the trunks that were temporarily provisioned over the alternate shared end-user facilities. All other local interconnection trunks with North County (i.e., all interconnection trunks with North County other than the six T1s on alternate end-user facilities) have been and continue to be provisioned over the dedicated facility.

10. To date, North County has not ordered local interconnection trunking from Verizon WV and is therefore not delivering any local interconnection traffic to Verizon WV. Currently, all local interconnection traffic with North County originates on Verizon WV's network and terminates on North County's network (i.e., all local traffic is one-way from Verizon WV to North County).

11. North County has refused to cooperate with Verizon WV in moving the initial six (T1) local interconnection trunks to the dedicated facility, which cannot be done without North County's cooperation.

12. North County has not cited (nor could it cite) any network operations reason for its refusal to cooperate.

13. Verizon WV has repeatedly requested North County to honor its commitment to allow Verizon WV to move its traffic to the now-constructed dedicated facilities. Attached is a February 14, 2002 letter to North County's counsel that explained in detail why North County is obligated to cooperate, that explained Verizon

WV's understanding of the improper reasons for North County's refusal to cooperate, and that offered to discuss the matter further.

14. North County's response was not to cooperate, or even to discuss the matter. Instead, North County filed the Complaint in the present proceeding.

15. Within the memory of the undersigned affiant, Verizon WV has never filed a complaint against another carrier for failure to cooperate on network operations matters, preferring instead to work productively with other carriers. The Complaint in this case, however, leaves Verizon WV with no choice but to bring a counterclaim, or risk being barred from later asserting it.

Jurisdiction of the Commission

16. Section 24, Dispute Resolutions Procedures, of the Interconnection Agreement reads, in relevant part, as follows:

"In the event the Commission retains continuing jurisdiction to implement and enforce the terms and conditions of this Agreement, the Parties agree that any dispute arising out of or relating to this Agreement that the Parties themselves cannot resolve, may be submitted to the Commission for resolution. The Parties agree to seek expedited resolution by the Commission, pursuant to applicable procedures established by the Commission."

17. North County also is a public utility subject to the jurisdiction of the Commission under Chapter 24 of the West Virginia Code.

Count I - Breach of Interconnection Agreement

18. The statements in Paragraphs 1-17 of this Counterclaim are hereby restated as if fully set forth herein.

19. Section 42 of the Interconnection Agreement reads as follows:
"Section 42. Good Faith Performance"

"4.2.1 In the performance of their obligations under this Agreement, the Parties shall cooperate fully and act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement (including, without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement), such action shall not be unreasonably delayed, withheld or conditioned."

20. Relevant portions of Section 4.3 of Attachment IV of the Interconnection

Agreement read as follows:

"4.3.1 Orders between the Parties to establish, add, change or disconnect trunks shall be processed by use of an Access Service Request ("ASR"), or another industry standard eventually adopted to replace the ASR for local service ordering."

"4.3.2 As discussed in this Agreement, both Parties will manage the capacity of their Local Interconnection Trunk Groups. Bell Atlantic will issue an ASR to MCIIm to trigger changes Bell Atlantic desires to the Bell Atlantic Local Interconnection Trunk Groups based on Bell Atlantic's capacity assessment. MCIIm will issue an ASR to Bell Atlantic to trigger changes MCIIm desires to the MCIIm Local Interconnection Trunk Groups based on MCIIm's capacity assessment."

* * *

"4.3.4 Orders that comprise a major project that directly impacts the other Party may be submitted at the same time, and their implementation shall be jointly planned and coordinated. Major projects are those that require the coordination and execution of multiple orders or related activities between and among Bell Atlantic and MCIIm work groups, including but not limited to the initial establishment of Local Interconnection or Meet Point trunk groups and service in an area, facility grooming, or network rearrangements."

21. North County has not cooperated in the making of changes in Verizon WV's terminating trunk groups in order to move them to the dedicated facilities that have been constructed for them by Verizon WV.

22. North County's failure or refusal to cooperate is not consistent with good faith performance of the Interconnection Agreement.

23. North County's failure or refusal to cooperate has caused a delay in the making of changes to Verizon WV's terminating trunk groups in order to move them to the dedicated facilities that have been constructed for them by Verizon WV.

24. North County's failure to cooperate and the resulting delay are unreasonable.

Count II - Estoppel

25. The statements in Paragraphs 1-24 of this Counterclaim are hereby restated as if fully set forth herein.

26. North County, by its statements, conduct, actions or other behavior described above, induced Verizon WV to place its terminating local trunks on an alternate facility.

27. North County knew, at the time, that Verizon WV was constructing dedicated facilities for those trunks, and that Verizon WV's understanding was that the traffic on the alternate facility would be moved to the dedicated facility as soon as possible after the construction was completed.

28. Verizon WV relied reasonably and in good faith, to its detriment, on North County's statements, conduct, actions or other behavior described above.

Count III - Unreasonable Acts or Practices

29. The statements in Paragraphs 1-28 of this Counterclaim are hereby restated as if fully set forth herein.

30. North County's acts are in violation of the Commission-approved Interconnection Agreement and therefore are unjust, unreasonable and insufficient within the meaning of West Virginia Code § 24-2-7(a).

PRAYER FOR EXPEDITED RELIEF

WHEREFORE, Verizon WV requests the following relief:


1. That North County be ordered to cooperate reasonably and in good faith in the immediate movement of all of Verizon WV's local traffic to the dedicated facilities that Verizon WV constructed for that traffic, and in a manner that eliminates or minimizes service disruption; and

2. That, for the reasons stated above, the Commission grant Verizon WV expedited relief. Such expedited relief would also be consistent with Section 24 of the Commission-approved Interconnection Agreement, which governs dispute resolution procedures, and which requires the parties to seek expedited relief of any dispute under that Section.

VERIZON WEST VIRGINIA INC.


Affiant

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February 14, 2002

VIA FAX AND E-MAIL

Mr. Joseph G. Dicks, Esq.
2720 Symphony Towers
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San Diego, CA 92101-8129
e-mail: jdicks@jgdllaw.com

Dear Mr. Dicks:

I write in response to your letter of February 11, 2002, regarding the interconnection facility between North County Communications (NCC) and Verizon West Virginia in Charleston, West Virginia.

If I understand your letter correctly, NCC would be willing to allow Verizon to move its existing local interconnection trunks from the shared OSP end user facility to the NCC dedicated inter-office carrier facility in Charleston, but only if Verizon agrees, in writing, that this same pattern – interconnecting using OSP end user facilities, and then moving to dedicated inter-office carrier facilities – “will be the appropriate protocol in all future circumstances and venues where NCC seeks interconnection.”

NCC's attempt to coerce Verizon into agreeing to particular interconnection terms and conditions in other states by refusing to cooperate with network maintenance in West Virginia is highly inappropriate. By withholding agreement to allow Verizon to move *its own originating local traffic* off of its OSP end user facility, NCC is reneging on its prior commitments to the contrary.¹ As you probably know, as an initial matter, Verizon did not agree to place initial interconnection traffic destined to NCC onto a shared end-user

¹ It should be noted that the limited number of interconnection trunks that Verizon seeks to migrate from its OSP end user facility to NCC's dedicated facility are only a portion of the local interconnection trunks in service between NCC and Verizon West Virginia. Verizon West Virginia has already provisioned the majority of its interconnection trunks to NCC over the dedicated entrance facility. Verizon West Virginia is merely trying to manage its network interconnection trunking efficiently through the use of a dedicated facility that Verizon built to NCC's premise for such interconnection, rather than *inefficiently* through the parallel use of outside plant end-user facilities that are not designed or intended for interconnection trunking with carriers.

Mr. Joseph G. Dicks, Esq.
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outside plant facility, but rather onto a newly-built, dedicated NCC inter-office carrier facility. Only after an urgent request from NCC, which indicated that it was fearful of losing its NXX codes assigned by Neustar, and just days before completion of NCC's dedicated facility, did Verizon agree to establish a minimal number of initial interconnection trunks over an existing OSP facility (with spare capacity) that was, and continues to be, used to provide end user services. In no way was Verizon obligated to provide such an interim arrangement under the terms of its interconnection agreement with NCC, but Verizon did so as a courtesy to NCC with the clear understanding and commitment by NCC that Verizon's originating interconnection traffic would be moved to the dedicated facility when that facility was finished. Given this history, Verizon is incredulous that NCC continues to refuse to cooperate with Verizon in the migration of these trunks as it previously agreed. Moreover, as detailed in my January 30 letter to Michael Hazzard, Mr. Hazzard indicated very clearly to me in December, 2001 that NCC was willing to go ahead with moving the circuits to the dedicated facility, and he never mentioned that NCC's agreement was conditional on getting agreement as to "appropriate protocol" for interconnection in other states.

NCC's position is also inappropriate because it makes no sense legally or from a network perspective. If NCC wants to litigate and/or arbitrate in Illinois or some other jurisdiction over what the "appropriate protocol" for interconnection should be, it should tee up the issue in *that* jurisdiction, *not* hold Verizon's network in West Virginia hostage in an attempt to extort concessions elsewhere. Indeed, backing out on NCC's agreement to cooperate with Verizon to move its interconnection trunks to the dedicated facility in West Virginia is a transparent litigation strategy that only serves to highlight why Verizon *should not* make special exceptions for NCC in the future.

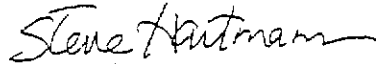
From a network perspective, the present situation is this: In Charleston, interconnection trunks are taking up capacity on a shared outside plant facility, thereby reducing the capacity available to serve end users – including those of Verizon, resellers, and other CLECs who use unbundled loops – even though there's now an NCC dedicated entrance facility with significant spare capacity ready to handle traffic to and from NCC. The only reasonable way to remedy this waste of resources is to do what NCC already agreed to do: allow Verizon to move its local interconnection trunks to NCC from the shared facility to the dedicated one as soon as possible. NCC's refusal to cooperate with Verizon unless and until it agrees to new interconnection terms and conditions in *other states* is a clear breach of NCC's duty to act in good faith under its interconnection agreement with Verizon WV.²

I hope that NCC will agree, based on this correspondence, to cooperate with Verizon in moving the interconnection trunks in question to the dedicated facility. If, however, NCC does not agree, then Verizon may seek the assistance of the West Virginia Commission pursuant to the West Virginia interconnection agreement at Part A, Section 24, Dispute Resolution Procedures.

Mr. Joseph G. Dicks, Esq.
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As you know, I'll be on vacation starting today and returning to the office on March 4. We can talk after that, or in my absence you can contact Leigh Hyer, who can be reached at 703-351-3064.

Sincerely,



Steve Hartmann

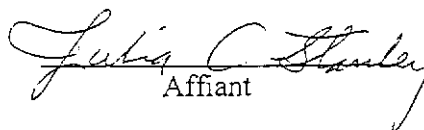
cc: Dianne McKernan

VERIFICATION

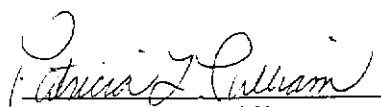
STATE OF WEST VIRGINIA

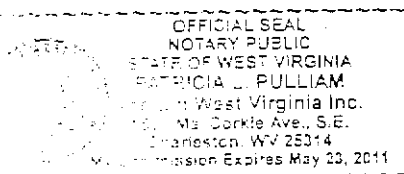
COUNTY OF KANAWHA

Julia C. Stanley, Senior Staff Consultant - Regulatory, Verizon West Virginia Inc., the defendant named in the foregoing action, being duly sworn, says that the facts and allegations contained in the foregoing Answer, Counterclaim and Prayer for Expedited Relief are true, except so far as they are therein stated to be on information, and that, so far as they are therein stated to be on information, she believes them to be true.


Affiant

Taken, sworn to and subscribed before me this 22nd day of March, 2002.


Notary Public

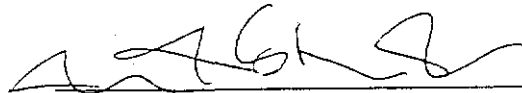


CERTIFICATE OF SERVICE

I, Joseph J. Starsick, Jr., Counsel for Defendant Verizon West Virginia Inc., do hereby certify that I have served the foregoing **Answer, Counterclaim and Prayer for Expedited Relief** upon the parties of record by depositing a true copy thereof in an envelope in the United States mail, this 22nd day of March, 2002, addressed as follows:

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Joseph J. Starsick, Jr. (WV State Bar I.D. #3576)